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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

ANTONIO ROSE,)
)
 Appellant-Defendant,)
)
 vs.) No. 45A03-0808-CR-419
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0712-MR-00013

March 6, 2009

NAJAM, Judge

STATEMENT OF THE CASE

Antonio Rose appeals his conviction for Felony Murder following a jury trial. He presents two issues for our review:

1. Whether the State presented sufficient evidence to support his conviction.
2. Whether the trial court abused its discretion when it sentenced him.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 14, 2007, Larry Williams was walking by himself in Gary when he encountered Rose and William Pope, who intended to rob Williams. Pope struck Williams, and Williams pulled out a knife. Pope struck Williams again, and Williams fell to the ground. Pope kicked Williams in the head repeatedly, and Rose kicked Williams' body several times. Rose also "stood on top of" Williams and hit him four times in the jaw. Appellant's App. at 100. Finally, Pope took \$12 from Williams, and Pope and Rose left the scene. Williams died as a result of his injuries.

The State charged Rose with murder, felony murder, and robbery. A jury found Rose guilty of aggravated battery,¹ felony murder, and robbery, but the trial court entered judgment only on the felony murder conviction. And the trial court sentenced Rose to fifty-six years executed. This appeal ensued.

¹ Aggravated battery is a lesser-included offense of murder.

DISCUSSION AND DECISION

Issue One: Sufficiency of the Evidence

Rose contends that the State did not present sufficient evidence to support his conviction. In particular, Rose maintains that there was no evidence that he knowingly or intentionally robbed Williams. We cannot agree.

When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Here, to prove felony murder, the State was required to prove that Rose killed Williams while committing or attempting to commit robbery. Ind. Code § 35-42-1-1. On appeal, Rose only challenges the sufficiency of the evidence regarding whether he intended to rob Williams. But Rose's own testimony undermines his argument on appeal. When asked what his intention was with regard to Williams that evening, Rose testified that his "intentions were just to get the cash and vacate the scene, but it didn't happen that way." Transcript at 242. In addition, Pope testified that they had approached Williams with the intention to rob him. Rose's argument on appeal amounts to a request that we reweigh the evidence, which we will not do. The State presented sufficient evidence to support Rose's conviction.

Issue Two: Sentence

Rose next contends that the trial court abused its discretion when it sentenced him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh’g, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” Id. (quotation omitted).

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.

Id. at 490-91.

In essence, Rose contends that the trial court abused its discretion when it did not assess any mitigating weight to the fact that William Pope was sentenced to only thirty years. Rose concedes that a court is not required to impose proportional sentences on co-participants of a crime, see Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008), but he asserts that “the least the trial court should have done was identified the disproportionate sentences as a mitigating factor.” Brief of Appellant at 10. We cannot agree.

Pope entered into a plea agreement with the State, whereby he pleaded guilty to robbery, as a Class A felony. And the trial court in Pope’s case imposed the advisory

sentence for a Class A felony of thirty years. Rose, on the other hand, was convicted of felony murder, with an advisory sentence of fifty-five years. The trial court imposed a fifty-six-year sentence based upon aggravating circumstances, including Rose's prior membership in a gang. Rose has not demonstrated any abuse of discretion in the trial court's sentencing here.

Finally, to the extent that Rose suggests that his sentence violates Article I, Section 16 of the Indiana Constitution, which provides that all penalties shall be proportionate to the nature of the offense, he cannot prevail. The trial court properly considered the facts and circumstances of the crime and concluded that the robbery could have been accomplished without beating the victim to death. We agree. The nature of the offense in this case is that a man was beaten to death over \$12. Under these circumstances, the trial court did not err when it imposed the advisory sentence for felony murder, plus one year.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.